

United States
7
Circuit Court of Appeals

For the Ninth Circuit.

BINGER STEWART HERINE, Also Known as
BINGER STEWART HORINE,
Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
First Division.

FILED
SEP 23 1921
F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

BINGER STEWART HERINE, Also Known as
BINGER STEWART HORINE,
Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
First Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Arraignment and Plea.....	8
Assignment of Errors.....	66
Bill of Particulars.....	12
Certificate of Clerk U. S. District Court to Transcript on Writ of Error.....	67
Citation on Writ of Error.....	72
Engrossed Bill of Exceptions.....	29
Information.....	2
Judgment, etc.....	62
Judgment on Verdict of Guilty as to Count No. 1.....	63
Minutes of Court—June 26, 1920—Arraign- ment and Plea.....	8
Minutes of Court—September 27, 1920—Order Dismissing Order to Show Cause as to Re- turn of Personal Property, and Minutes of Trial.....	25
Minutes of Court—October 2, 1920—Judgment, etc.....	62
Motion in Arrest of Judgment.....	60
Motion for New Trial.....	58
Names and Addresses of Attorneys of Record..	1

Index.	Page
Order Approving and Settling Bill of Exceptions.....	57
Order Dismissing Order to Show Cause as to Return of Personal Property, and Minutes of Trial.....	25
Order Extending Time to and Including December 15, 1920, to File Record and Docket Cause.....	74
Order Extending Time to and Including February 1, 1921, to File Record and Docket Cause.....	75
Order Extending Time to and Including March 1, 1921, to File Record and Docket Cause..	77
Order Extending Time to and Including April 1, 1921, to File Record and Docket Cause..	78
Order to Show Cause.....	13
Petition for Writ of Error.....	64
Petition for Return of Personal Property....	9
Praecipe for Transcript on Writ of Error....	1
Return to Petition and Order to Show Cause..	16
Return to Petition and Order to Show Cause..	19
Return to Writ of Error.....	71
Returns of U. S. Marshal on Service of Order to Show Cause.....	14
TESTIMONY ON BEHALF OF THE GOVERNMENT:	
BROUDERS, JOSEPH..	46
Cross-examination.....	47
DELIGNE, HARVEY A.....	41
Cross-examination....	43
Redirect Examination.....	43

Index.	Page
TESTIMONY ON BEHALF OF THE GOV- ERNMENT—Continued:	
Recalled.....	51
Recalled in Rebuttal.....	55
GRIFFIN, TIM.....	49
Cross-examination.....	49
HOWARD, W. A.....	50
Cross-examination.....	50
McINTYRE, PETER.....	48
Cross-examination.....	48
OHNIMUS, GEORGE J.....	44
Cross-examination.....	45
Redirect Examination.....	45
Recross-examination.....	45
Recalled in Rebuttal.....	55
WARD, CHARLES J.....	51
TESTIMONY ON BEHALF OF DEFEND- ANT:	
HERINE, BINGER S.....	52
Cross-examination.....	54
Verdict.....	28
Writ of Error and Order Allowing Same....	69

Names and Addresses of Attorneys of Record.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Francisco, Cal.

For Defendant and Plaintiff in Error:

CHAUNCEY F. TRAMUTOLO, Esq., San Francisco, Cal.

UNITED STATES OF AMERICA.

District Court of the United States, Northern
District of California.

Clerk's Office.

No. 8517.

THE UNITED STATES OF AMERICA

vs.

BINGER STEWART HERINE, etc.

Praeipce (for Transcript on Writ of Error).

To the Clerk of said Court:

Sir: Please prepare transcript on writ of error to include the following papers and proceedings:
Information.

Minutes of arraignment and plea—June 26th, 1920.

Petition for return of personal property.

Order to show cause.

Bill of particulars.

Return of U. S. Marshal, on service of order to show cause.

Two returns to order to show cause.

Minutes of September 27th and October 2d, 1920.

Verdict and judgment.

Motion for new trial.

Motion in arrest of judgment.

Petition for writ of error and assignment of errors.

Original writ of error with order allowing.

Original citation on writ of error.

Bill of exceptions.

C. F. TRAMUTOLO,
Attorney for Defendant.

[Endorsed]: Filed Mar. 17, 1921. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [1*]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8517.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BINGER STEWART HERINE,
Defendant.

Information.

At the March Term of said Court in the year of
our Lord one thousand nine hundred and twenty.

BE IT REMEMBERED, that Annette Abbott
Adams, United States Attorney for the Northern

*Page-number appearing at foot of page of original certified Transcript
of Record.

District of California, by and through Albert M. Hardie, Assistant United States Attorney, who for the United States in its behalf prosecutes in his own proper person, comes into court on this, the 22d day of June, 1920, and with leave of said Court first having been had and obtained, gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit, is hereto attached and made a part hereof;

NOW, THEREFORE, your informant presents:
THAT

BINGER STEWART HERINE,
hereinafter called the defendant heretofore, to wit, on the 20th day of June, 1920, at San Francisco, in the County of San Francisco, in the Southern Division of the Northern District of [2] California, after the date upon which the Eighteenth Amendment to the Constitution of the United States went into effect did unlawfully, wilfully and knowingly, in violation of section 21 of Title II of the Act of October 28, 1919, known as the "National Prohibition Act, maintain a common nuisance in that he did unlawfully, wilfully and knowingly keep on the premises situated at 457 Ellis Street, known as Summerville Apartments, to wit, Rooms 3, 4 and 5 certain intoxicating liquor, to wit, sherry wine, and port wine containing one-half of one percent or

more alcohol by volume, and then and there fit for use for beverage purposes.

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

SECOND COUNT.

And affiant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents: THAT

BINGER STEWART HERINE,
hereinafter called the defendant, heretofore, to wit, on the 19th day of June, 1920, at San Francisco, in the Southern Division of the Northern District of California, then and there being, and after the date upon which the Eighteenth Amendment to the Constitution of the United States went into effect, did unlawfully, wilfully and knowingly in violation of section 3 of Title II of the Act of October 28, 1919, known as the National Prohibition Act, sell certain intoxicating liquor, to wit, sherry wine, containing [3] one-half of one per cent or more of alcohol by volume, and then and there fit for use for beverage purposes.

AGAINST the peace and dignity of the United

States of America and contrary to the form of the statute of the said United States of America in such cases made and provided.

THIRD COUNT.

And affiant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents:
THAT

BINGER STEWART HERINE,
hereinafter called the defendant, heretofore, to wit, on the 20th day of June, 1920, at San Francisco, in the Southern Division of the Northern District of California, then and there being, and after the date upon which the Eighteenth Amendment to the Constitution of the United States went into effect, did unlawfully, wilfully and knowingly in violation of section 3 of Title II of the Act of October 28, 1919, known as the National Prohibition Act, sell certain intoxicating liquor, to wit, sherry wine, containing one-half of one per cent or more of alcohol by volume, and then and there fit for use for beverage purposes.

AGAINST the peace and dignity of the United States of America and contrary to the form of the

statute of the said United States of America in such case made and provided.

ANNETTE ABBOTT ADAMS,

United States Attorney.

ALBERT M. HARDIE,

Assistant United States Attorney. [4]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Harvey A. Deline, being first duly sworn, deposes and says: That Binger Stewart Herine, on the 20th day of June, 1920, at rooms 3, 4 and 5 of Summer-ville Apartments, #457 Ellis Street, in the City and County of San Francisco, in the Southern Division of the Northern District of the State of California and within the jurisdiction of this court, did then and there maintain a common nuisance in that he, the said Binger Stewart Herine, did then and there keep in the above-mentioned premises certain intoxicating liquor, to wit, sherry wine and port wine, containing one-half of one per cent or more of alcohol by volume, which was then and there fit for use for beverage purposes.

That the keeping of the said intoxicating liquor by the said Binger Stewart Herine was then and there prohibited unlawful and in violation of section 21, of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

And affiant further deposes and says that Binger Stewart Herine, on the 19th day of June, 1920, at the place above mentioned did then and there sell intoxicating liquor, to wit, sherry wine, containing

one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes. And affiant further deposes and says that on the 20th day of June, 1920, at the place above mentioned, the said Binger Stewart Herine did then and there sell certain intoxicating liquor, to wit, sherry wine, containing one-half of one per cent or more of alcohol by volume which was then and there fit for use for beverage purposes. [5]

That the sales by the said Binger Stewart Herine of the said sherry wine, on the said 19th day of June, 1920, and on said 20th day of June, 1920, as afore-said was then and there prohibited, unlawful, and in violation of section 3 of Title II of the Act of Congress of October 28, 1919, to wit, the National Prohibition Act.

HARVEY A. DELINE.

Subscribed and sworn to before me this 21st day of June, 1920.

[Seal]

C. W. CALBREATH,
Deputy Clerk U. S. District Court, Northern Dis-
trict of California.

[Endorsed]: Filed Jun. 22, 1920. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [6]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 26th day of June, in the year of our Lord one thousand nine hundred and twenty. Present: the Honorable MAURICE T. DOOLING, Judge.

No. 8517.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BINGER STEWART HERINE.

Minutes of Court—June 26, 1920—Arraignment and Plea.

In this case the defendant was present in court with attorney. On motion of A. M. Hardie, Esq., Asst. U. S. Atty., and on order of Court, said defendant was duly arraigned upon the Information filed herein, stated his true name to be as contained therein, waived formal reading thereof, and thereupon plead "Not Guilty" of the offense charged therein, which plea the Court ordered and the same is hereby entered and this case continued to July 12, 1920, to be set for trial. [7]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8517.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Defendant.

Petition for the Return of Personal Property.

Comes now the above-named defendant and alleges:

I.

That he is a citizen of the United States of America and a resident of the City and County of San Francisco, State of California.

II.

That prior to January 16th, 1920, and at all times hereinafter mentioned, said defendant was the owner of an assortment of liquors and beverages, to wit, whiskey and brandy, which said liquors and beverages were and are the lawful and *bona fide* property of said defendant and were lawfully in his possession at the time of their seizure by Harvey DeLigne, a patrolman of the Police Department of the City and County of San Francisco, State of California.

III.

That the said liquors and beverages, to wit, whiskey and brandy, were seized by Harvey A. Deligne,

a patrolman of the Police Department of the City and County of San Francisco, State of California, on or about the twentieth day of June, 1920, and that the said property is now retained by Harvey A. Deligne and John L. Considine, District Prohibition Enforcement Officer. That the [8] seizure by the above-named officers from the said defendant was in violation of the fourth and fifty amendments to the Constitution of the United States.

IV.

That the Government proposes to use the said above-mentioned seized property, so seized by the above-named officers, against this defendant at the time of his trial, proceedings for which have been instituted charging said defendant with violating the Act of October 28th, 1919, commonly known as the National Prohibition Act, unless this Court orders the return of said property so unlawfully seized.

WHEREFORE defendant prays that the said above-named Harvey A. DeLigne and John L. Considine, and each of them and all other officers responsible for the seizure and retention of said hereinabove described property, be notified, and that the above-entitled court direct and order said above-mentioned officers and any and all other officers responsible for the seizure and retention of said hereinabove described property, to show cause why said property should not be returned to said defendant.

BINGER STEWART HORINE,

Petitioner and Defendant.

C. F. TRAMUTOLO,

Attorney for Defendant. [9]

State of California,
City and County of San Francisco,—ss.

Binger Stewart Herine, also known as Binger Stewart Horine, being first duly sworn, deposes and says:

That he is the defendant named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief and as to those matters he believes it to be true.

BINGER STEWART HORINE.

Subscribed and sworn to before me this 23 day of September, 1920.

[Seal] GRACE CAMPBELL,
Notary Public in and for the City and County of
San Francisco, California.

[Endorsed]: Filed Sep. 23, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [10]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8517.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Defendant.

Bill of Particulars.

Comes now the above-named defendant and furnished herewith his bill of particulars, and requests that the same be made part of his petition for the return of personal property filed in the above-entitled court on the twenty-third day of September, 1920; and asks that the property seized from him consisting of liquors and beverages, to wit, whiskey and brandy, be returned to him for the following reasons:

I.

That the said property was seized by Harvey A. De Ligne, a patrolman of the Police Department of the City and County of San Francisco, without any lawful authority whatsoever; that the said officer at the time of seizure of the property from defendant was not possessed with a warrant authorizing the seizure of said property.

II.

That the said Harvey A. De Ligne at the time of the arrest of the defendant did not have a warrant for such purpose.

III.

That the said Harvey A. De Ligne did not at the time of the seizure of the property have a search warrant for said purpose. [11]

IV.

That the property seized by said Harvey A. De Ligne at the time of its seizure, to wit, on the twentieth day of June, 1920, was seized from the *bona fide* and lawful domicile of defendant.

By reason of the foregoing facts defendant prays for the return of the personal property seized.

BINGER STEWART HORINE,
Defendant.

CHAUNCEY F. TRAMUTOLO,
Attorney for Defendant.

[Endorsed]: Filed Sep. 24, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [12]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8517.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Defendant.

Order to Show Cause.

The above-named defendant having filed herein his duly verified petition for the return of personal property, and good cause appearing therefor,—

IT IS HEREBY ORDERED that John L. Considine, District Prohibition Enforcement Officer and Harvey A. Deligne, a patrolman of the Police Department of the City of County of San Francisco, and each of them and any and all other officers responsible for the seizure and the retention of the

property described in said petition, appear before this Court at the courtroom thereof in the Post Office Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California, at the hour of ten A. M. on the 25th day of September, 1920, or as soon thereafter as counsel can be heard, to then and there show cause, if any they have, why they should not be compelled to turn over and deliver the property seized and retained by them as aforesaid to the said defendant.

Dated: The 23d day of September, 1920.

M. T. DOOLING,

Judge. [13]

GOOD CAUSE APPEARING THEREFOR, the time for serving said order is hereby shortened so that the same may be served on or before the 23d day of September, 1920.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sep. 23, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

(Returns of U. S. Marshal on Service of Order to Show Cause.)

RETURN ON SERVICE OF WRIT.

United States of America,
Nor. District of Calif.,—ss.

I hereby certify and return that I served the annexed order to show cause on the therein named Harvey A. Deligne by handing to and leaving the

same with Harvey A. Deligne, personally, at San Francisco, in said District, on the 25th day of Sept., A. D. 1920.

J. B. HOLOHAN,
U. S. Marshal.
By Thos. F. Mulhall,
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Nor. District of Calif.,—ss.

I hereby certify and return that I served the annexed order to show cause on the therein named John L. Considine by handing to and leaving the same with John L. Considine, personally, at San Francisco, in said District, on the 24th day of Sept., A. D. 1920.

J. B. HOLOHAN,
U. S. Marshal,
By Thos. F. Mulhall,
Deputy.

[Endorsed]: Filed Sept. 27, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [15]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8517.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Defendant.

Return to Petition and Order to Show Cause.

Comes now Harvey A. Delign, and for himself and for John L. Considine, and all persons and officers referred to in defendant's petition, bill of particulars and the order to show cause herein for return of certain whiskey and brandy alleged therein to belong to defendant, and for answer to said petition and return to said order to show cause, denies:

I.

That Harvey A. Delign, as a police patrolman or otherwise, or that John L. Considine, as District Prohibition Enforcement Officer or otherwise, or that any person or officer referred to therein on the 20th day of June, 1920, or at any time or ever or at all seized the whiskey and brandy or whiskey or brandy belonging to defendant or seized any whiskey or brandy at all.

II.

That said property or any part thereof is now or

ever was in the possession of or retained by said Harvey A. Delign, or said John L. Considine, or in the possession of or retained by any person or officer known to or of which the parties herein answering or referred to have any knowledge whatever, and in this connection allege the fact to be; that the said Harvey A. Delign does not [16] know, nor does any person or officer answering or for whom answer and return is made know or have any knowledge whatever of the alleged seizure or retention of the said or any whiskey or brandy whatever.

III.

Denies that the Government or the plaintiff or any person proposes or intends to use the said whiskey or brandy, or any part thereof, against this defendant at the or any trial instituted by plaintiff herein against said defendant.

WHEREFORE, Harvey A. Delign, John L. Considine, and all persons for whom this answer and return is made, pray that the said petition for return of said whiskey and brandy be dismissed and the order for the return of the said property prayed for be denied, and that plaintiff may have judgment for its costs in this behalf incurred.

HARVEY A. DELINE,

FRANK M. SILVA,

United States Attorney.

BEN F. GEIS,

Asst. United States Attorney,

Attorneys for Plaintiff. [17]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Harvey A. Delign, being first duly sworn, deposes any says: That he is the Harvey A. Delign, named and referred to in the petition and order to show cause in the above and within entitled action. That he makes the above answer and return to defendants petition and the order to show cause herein for himself and for the said John L. Considine, and all persons and officers referred to therein. That he has read the foregoing answer and return to said petition and order to show cause and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief and as to those matters he believes it to be true.

HARVEY A. DELINE.

Subscribed and sworn to before me this 27th day of September, 1920.

[Seal]

LYLE S. MORRIS,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Sep. 27, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [18]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8517.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Defendant.

Return to Petition and Order to Show Cause.

Comes now Harvey A. Delign, and for himself and for John L. Considine, and all persons and officers referred to in defendant's petition, bill of particulars and the order to show cause herein, for return of certain whiskey and brandy to defendant alleged in said petition to belong to defendant, and for answer and return to said petition and order to show cause respectively, denies and alleges as follows, to wit:

I.

Denies that on the 20th day of June, 1920, or at any time whatever, Harvey A. Delign, John L. Considine, or any person or officer referred to in defendant's petition, bill of particulars or the order to show cause herein, either jointly, severally or at all seized the or any whiskey or brandy belonging to the defendant or seized any whiskey or brandy at all.

II.

Denies that the said property, or any part thereof,

alleged, to have been seized is now or ever was in the possession of any of the persons or officers here answering or for whom answer is made.

III.

Denies that the said property is now or ever has been retained [19] by Harvey A. Delign, John L. Considine, or any person or officer known to said Harvey A. Delign, John L. Considine, or either of them.

IV.

Denies that the Government, plaintiff, or any person, proposes or intends to use the said whiskey or brandy, or any part thereof, against the said defendant at the or any trial instituted by plaintiff herein against said defendant, or at the or any trial or proceeding whatever.

V.

Denies that the said Harvey A. Delign, John L. Considine, or either of them, or any of the persons or officers referred to in defendant's petition, bill of particulars or the order to show cause herein, on the 20th day of June, 1920, or at any time or ever or at all seized or caused to be seized from the *bona fide* and lawful or *bona fide* or lawful or any domicile of defendant the said whiskey and brandy or whiskey or brandy or any whiskey or brandy whatever.

For a further and separate answer and return to said petition and order to show cause allege the facts to be:

1.

That at all of the times herein mentioned Harvey A. Delign was, ever since has been and now is a mem-

ber of the police force of the City and County of San Francisco, California, to wit, a police officer and at all times herein mentioned acted as such officer.

2.

That on the 20th day of June, 1920, at the hour of 1:30 o'clock A. M. of said day, Harvey A. Delign, as such officer, received a telephone call from the Summerville Apartments, located at 457 Ellis Street, City and County of San Francisco, California, informing him that the peace and quiet of the occupants of said apartments were being disturbed by loud and boisterous noises made by persons [20] in rooms 3-4 and 5 of said apartments, and that intoxicating liquors were then and there being sold unlawfully in said rooms. That in response to said call and information said Harvey A. Delign, accompanied by other police officers of the said city and county, immediately went to rooms 3-4 and 5 of said Apartments and found the door to said rooms wide open, and in plain view saw bottles of intoxicating liquor and numerous glasses for serving intoxicating liquors, and then and there heard loud and boisterous noises being made by occupants of said rooms, and thereupon said Harvey A. Delign, and said other officers entered *entered* said rooms and found therein five men and three women, one of which said men was defendant herein and each and all of said men and women were then and there under the influence of intoxicating liquor to the extent of being drunk, noisy and boisterous, disturbing the peace and quiet of the occupants of said Summerville Apartments. That then and there in said rooms, and in plain view

of said Harvey A. Delign, and said other officers there were numerous bottles and three (3) kegs containing sherry and port wine containing one-half of one per cent or more of alcohol by volume and fit for use for beverage purposes. That the said defendant then and there and in the presence of said Harvey A. Delign, and the said other officers furnished and delivered to four (4) of said five men and to said three women a part of the said wine and the same was then and there by said men and women drunk. That the said defendant then and there said to Harvey A. Delign and to said other officers that he was selling said wine. That two of the said men to whom said defendant furnished and delivered the said wine then and there and in the presence of defendant said to said Harvey A. Deline, and said other officers, that they paid to defendant twenty-five cents per drink for said wine. That defendant then and there stated to [21] Harvey A. Deligne, that he resided in room 214, of the Adair Hotel located at 445 Ellis Street, in the said City and County of San Francisco, and that he had no permit of any kind to move any of said wine from said hotel to said Summerville Apartments. That thereupon said Harvey A. Deligne arrested said defendant and then and there, and at the time of the said arrest, took into his possession, of said wine ten full bottles, one keg full and two partly filled kegs, and of the said bottles some of them contained sherry and some contained port wine, and of the said kegs some contained sherry and some port wine, and all of said wine then and there contained one-half of one per cent and more of

alcohol by volume, and was then and there fit for use for beverage purposes, and was then and there in the possession of the defendant and intended by him for use and was then and there being used in violation of Title II of the Act of October 28th, 1919, and known as the "National Prohibition Act." That the said defendant, as hereinbefore set out, then and there stated to said Harvey A. Deligne, that he, said defendants, residence was then at 445 Ellis Street, in the said City and County of San Francisco, and upon information thereafter received from the clerk of the hotel located at 445 Ellis Street, that said defendant on the said 20th day of June, 1920, resided at said hotel, the said Harvey A. Deligne has reason to believe, and does believe, and upon such information and belief alleges the fact to be, that said defendant's residence on the said 20th day of June, 1920, was at and in the Hotel Adair, 445 Ellis Street, and that defendant on said 20th day of June, 1920, had no *bona fide* or lawful residence in said Summerville Apartments, nor at 457 Ellis Street, in said City and County of San Francisco, California. That John L. Considine, as District Prohibition Officer, or otherwise, [22] has not, nor has any official of the plaintiff herein, ever seized, had in his possession or retained any of the said wine.

WHEREFORE the said Harvey A. Deligne, John L. Considine, and all the other officers referred to and mentioned in said petition and order to show cause herein prays, that the said petition be dis-

missed and that the prayer for the return of the property be denied.

HARVEY A. DELINE.

FRANK M. SILVA,

United States Attorney.

BEN F. GEIS,

Asst. United States Attorney,

Attys. for Plaintiff. [23]

United States of America,

Northern District of California,

City and County of San Francisco,—ss.

Harvey A. Delign, being first duly sworn, deposes and says: That he is the Harvey A. Delign named and referred to in the petition and order to show cause in the above and within entitled action. That he makes the above answer and return, to defendant's petition, bill of particulars and the order to show cause herein, for himself, John L. Considine and all persons and officers referred to in said petition, bill of particulars and order to show cause. That he has read the foregoing answer and returns and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

HARVEY A. DELINE.

Subscribed and sworn to before me this 27th day of September, A. D. 1920.

[Seal]

LYLE S. MORRIS,

Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Sep. 27, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [24]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the court-room thereof, in the City and County of San Francisco, on Monday, the 27th day of September, in the year of our Lord one thousand nine hundred and twenty. Present: the Honorable MAURICE T. DOOLING, Judge.

No. 8517.

UNITED STATES OF AMERICA

vs.

BINGER STEWART HERINE.

Minutes of Court—September 27, 1920—Order Dismissing Order to Show Cause as to Return of Personal Property, and Minutes of Trial.

This case came on regularly this day for the trial of said defendant and for hearing on order to show cause and petition for return of certain property taken from the defendant herein. Said defendant was present in court with attorney, C. F. Tramutolo, Esq. B. F. Geis, Esq., Asst. U. S. Atty., was present on behalf of the United States, and presented and filed two returns to said petition and order to show cause, and after hearing Mr. Geis and Mr. Tramutolo, the Court ordered that said order to show cause be dismissed and said petition denied.

After hearing said attorneys, the Court ordered that the trial of this case proceed and that the jury-box be filled from the regular panel of trial jurors of this court. Accordingly, the hereinafter named persons were duly drawn by lot, sworn and examined etc., as follows:

M. H. Falkenstein, C. S. Falk, C. H. Adams, Louis B. Gorgers, and Edwin R. Jackson accepted; E. H. O'Brien, ordered excused: John C. Bateman, John C. Dornin, A. W. Dollars, W. E. Holcomb, accepted; Mark E. Fontana, ordered excused; C. J. Wood, accepted; Fred C. Gerdes, peremptorily challenged by the United States and ordered excused; Andrew Armstrong and Henry J. Diehl, accepted. [25] Thereupon twelve (12) persons having been accepted as jurors to try said defendant, were accordingly sworn, viz.:

M. H. Falkenstein,	John C. Dorrin,
C. F. Falk,	A. W. Dollard,
C. H. Adams,	W. E. Holcomb,
Louis B. Gorgers,	C. J. Wood,
Edwin R. Jackhon,	Andrew Armstrong,
John C. Bateman,	Henry J. Diehl.

On motion of Mr. Tramutolo, the Court ordered that all persons to be called as witnesses herein be excluded from the courtroom during introduction of evidence. Mr. Geis made statement to the Court and jury of the nature of the case and called H. A. Delign, George J. Ohnimus, Joseph Brouders, Peter MacIntyre, T. Griffith, W. A. Howard and Charles J. Ward, each of whom was duly sworn and examined on behalf of the United States, and introduced in

evidence certain bottles and contents, etc., which were filed and marked United States Exhibit No. 1, and thereupon rested case of the United States.

Mr. Tramutolo thereupon moved the Court for an order instructing the jury herein to return a verdict of Not Guilty, which motion the Court ordered denied, and to which order Mr. Tramutolo entered an exception, and called the defendant, Binger Stewart Herine, who was duly sworn and examined in his own behalf. Mr. Geis recalled in rebuttal George J. Ohnimus and H. A. Delign, and thereupon rested the case of the United States.

The case was then submitted without argument on behalf of either party; whereupon the Court proceeded to instruct the jury herein, who after being so instructed retired at 12:05 o'clock P. M., to deliberate upon a verdict and subsequently returned into Court at 12:15 o'clock P. M., and upon being called, all twelve (12) jurors answered to their names, and in answer to question of Court stated they had agreed upon a verdict, and presented a written verdict, which the Court ordered filed and recorded, viz.: "We the jury, find [26] Binger Stewart Herine, the defendant at the bar, Guilty on Count No. 1; Not Guilty on Counts No. 2 and 3. Arthur W. Dollard, Foreman." Whereupon the Court ordered that the jurors herein be discharged from further consideration of this case, and excused from attendance upon the Court until September 28, 1920, at 10 o'clock A. M. After hearing the respective attorneys, the Court ordered that this case be con-

tinued to October 2, 1920, for pronouncing of judgment. [27]

In the District Court of the United States in and
for the Northern District of California, First
Division.

No. 8517.

THE UNITED STATES OF AMERICA

vs.

BINGER STEWART HERINE.

(Verdict.)

We, the Jury, find Binger Stewart Herine, the
defendant at the bar, Guilty on Count No. 1; Not
Guilty on Counts Nos. 2 and 3.

ARTHUR W. DOLLARD,

Foreman.

[Endorsed]: Filed Sept. 27, 1920, at 12 o'clock
and 15 minutes P. M. W. B. Maling, Clerk. By
Lyle S. Morris, Deputy Clerk. [28]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8517.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Defendant.

Engrossed Bill of Exceptions.

BE IT REMEMBERED, that on the 23d day of September, 1920, in the above-entitled cause, the defendant in said cause filed therein and presented to the Honorable M. T. Dooling, Judge of the above-entitled court, his certain petition for the return of personal property, which said petition is in the words and figures following, to wit:

(Title of Court and Cause.)

PETITION FOR THE RETURN OF PERSONAL PROPERTY.

Comes now the above-named defendant and alleges:

I.

That he is a citizen of the United States of America, and a resident of the City and County of San Francisco, State of California.

II.

That prior to January 16th, 1920, and at all times

hereinafter mentioned, said defendant was the owner of an assortment of liquors and beverages, to wit, sherry and port, which said liquors and beverages were and are the lawful and *bona fide* property of said defendant and were lawfully in his possession at the time of their seizure by Harvey De Ligne, a patrolman of the Police Department of [29] the City and County of San Francisco, State of California.

III.

That the said liquors and beverages, to wit, sherry and port, were seized by Harvey A. Deligne, a patrolman of the Police Department of the City and County of San Francisco, State of California, on or about the twentieth day of June, 1920, and that the said property is now retained by Harvey A. Deligne and John L. Considine, District Prohibition Enforcement Officer. That the seizure by the above-named officers from the said defendant was in violation of the fourth and fifth amendments to the Constitution of the United States.

IV.

That the Government proposes to use the said above-mentioned seized property, so seized by the above-named officers, against this defendant at the time of his trial, proceedings for which have been instituted charging said defendant with violating the Act of October 28th, 1919, commonly known as the National Prohibition Act, unless this Court orders the return of said property so unlawfully seized.

WHEREFORE, defendant prays that the said above-named Harvey A. De Ligne and John L. Considine, and each of them and all other officers responsible for the seizure and retention of said hereinabove described property be notified, and that the above-entitled court direct and order said above-mentioned officers and any and all other officers responsible for the seizure and retention of said hereinabove described property, to show cause why said property should not be returned to said defendant.

BINGER STEWART HORINE,

Petitioner for Defendant.

CHAUNCEY F. TRAMUTOLO,

Attorney for Defendant. [30]

State of California,

City and County of San Francisco,—ss.

Binger Stewart Herine, also known as Binger Stewart Horine, being first duly sworn, deposes and says:

That he is the defendant named in the foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

BINGER STEWART HORINE.

Subscribed and sworn to before me this 23 day of September, 1920.

[Seal]

GRACE CAMPBELL,

Notary Public in and for the City and County of San Francisco, State of California.

BE IT FURTHER REMEMBERED, that after reading and considering the said petition, the said Court, on the 23d day of September, 1920, duly gave, made and issued in said cause its certain order to show cause, which said order is in the words and figures following, to wit:

(Title of Court and Cause.)

ORDER TO SHOW CAUSE.

The above named defendant having filed herein his duly verified petition for the return of personal property, and good cause appearing therefor,

IT IS HEREBY ORDERED that John L. Con-sidine, District Prohibition Enforcement Officer, and Harvey A. Deligne, a patrolman of the Police Department of the City and County of San Francisco, and each of them, and any and all other officers responsible for the seizure [31] and the retention of the property described in said petition, appear before this court at the courtroom thereof in the Post Office Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California, at the hour of ten A. M. on the 25th day of September, 1920, or as soon thereafter as counsel can be heard, to then and there show cause, if any they have, why they should not be compelled to turn over and deliver the property seized and retained by them as aforesaid, to the said defendant.

Dated: The 23d day of September, 1920.

M. T. DOOLING,
Judge.

GOOD CAUSE APPEARING THEREFOR, the time for serving said order is hereby shortened so that the same may be served on or before the 23d day of September, 1920.

M. T. DOOLING,
Judge.

BE IT FURTHER REMEMBERED, that on the 25th day of September, 1920, pursuant to suggestion made by the Judge of said Court, the said defendant in support of the petition hereinabove set forth filed his certain bill of particulars, which was and is in the words and figures following, to wit:

(Title of Court and Cause.)

BILL OF PARTICULARS.

Comes now the above-named defendant and furnishes herewith his bill of particulars, and requests that the same be made part of his petition for the return of personal property filed in the above-entitled court on the twenty-third day of September, 1920; and asks that the property seized from him consisting of liquors and beverages, to wit, sherry and port, be returned to him for the following reasons: [32]

I.

That the said property was seized by Harvey A. De Ligne, a patrolman of the Police Department of the City and County of San Francisco, without any lawful authority whatsoever; that the said officer at the time of seizure of the property from defendant was not possessed with a warrant authorizing the seizure of said property.

II.

That the said Harvey A. De Ligne at the time of the arrest of the defendant did not have a warrant for such purpose.

III.

That the said Harvey A. De Ligne did not at the time of the seizure of the property have a search-warrant for said purpose.

IV.

That the property seized by said Harvey A. De Ligne at the time of its seizure, to wit, on the twentieth day of June, 1920, was seized from the *bona fide* and lawful domicile of defendant.

By reason of the foregoing facts defendant prays for the return of the personal property seized.

BINGER STEWART HORINE,
Defendant.

CHAUNCEY F. TRAMUTOLO,
Attorney for Defendant.

BE IT FURTHER REMEMBERED, that on the 27th day of September, 1920, the United States Attorney, on behalf of the plaintiff, filed in said Court his certain return to petition and order to show cause, which said return is in the words and figures following, to wit:

(Title of Court and Cause.)

RETURN TO PETITION AND ORDER TO
SHOW CAUSE.

Comes now Harvey A. Delign, and for himself and for John L. Considine, and all persons and officers referred to in defendants' petition, bill of

particulars and the order to show cause herein, [33]. for the return of certain whiskey and brandy to defendant alleged in said petition to belong to defendant, and for answer and return to said petition and order to show cause respectively, denies and alleges as follows to wit:

I.

Denies that on the 20th day of June, 1920, or at any time whatever, Harvey A. Delign, John L. Considine, or any person or officer referred to in defendant's petition, bill of particulars or the order to show cause herein, either jointly, severally or at all, seized the or any whiskey or brandy belonging to the defendant or seized any whiskey or brandy at all.

II.

Denies that the said property, or any part thereof, alleged to have been seized is now or ever was in the possession of any of the persons or officers here answering or for whom answer is made.

III.

Denies that the said property is now or ever has been retained by Harvey A. Delign, John L. Considine, or any person or officer known to said Harvey A. Delign, John L. Considine, or either of them.

IV.

Denies that the Government, plaintiff, or any person, proposes or intends to use the said whiskey or brandy, or any part thereof, against the said defendant at the or any trial instituted by plaintiff herein against said defendant, or at the or any trial or proceeding whatever.

V.

Denies that the said Harvey A. Delign, John L. Considine, or either of them or any of the persons or officers referred to in defendant's petition, bill of particulars or the order to show cause herein, on the 20th day of June, 1920, or at any time or ever or at all seized or caused to be seized from the *bona fide* and lawful or *bona fide* or lawful or any domicile of the defendant the said whiskey [34] and brandy or whiskey or brandy or any whiskey or brandy whatever.

For a further and separate answer and return to said petition and order to show cause allege the facts to be:

1.

That at all of the times herein mentioned Harvey A. Delign was, ever since has been and now is a member of the police force of the City and County of San Francisco, California, to wit, a police officer, and at all times herein mentioned acted as such officer.

2.

That on the 20th day of June, 1920, at the hour of 1:30 o'clock A. M., of said day, Harvey A. Delign, as such officer, received a telephone call from the Summerville Apartments, located at 457 Ellis Street, City and County of San Francisco, California, informing him that the peace and quiet of the occupants of said apartments were being disturbed by loud and boisterous noises made by persons in rooms 3-4 and 5 of said apartments, and that intoxicating liquors were then and there being sold

unlawfully in said rooms. That in response to said call and information said Harvey A. Delign, accompanied by other police officers of the said city and county immediately went to rooms 3-4 and 5, of said apartments, and found the door to said rooms wide open, and in plain view saw bottles of intoxicating liquor and numerous glasses for serving intoxicating liquors, and then and there heard loud and boisterous noises being made by occupants of said rooms, and thereupon said Harvey A. Delign, and said other officers entered *entered* said rooms and found therein five men and three women, one of which said men was defendant herein, and each and all of said men and women were then and there under the influence of intoxicating liquor to the extent of being drunk, noisy and boisterous, disturbing the peace and quiet of the occupants of said Summerville Apartments. That then and there in said rooms and in plain view of said Harvey A. Delign and said [35] other officers there were numerous bottles and three (3) kegs containing sherry and port wine containing one-half of one per cent or more of alcohol by volume and fit for use for beverage purposes. That the said defendant then and there and in the presence of said Harvey A. Delign and the said other officers furnished and delivered to four (4) of said men and to said three women a part of the said wine and the same was then and there by said men and women drunk. That the said defendant then and there said to Harvey A. Delign and to said other officers that he was selling said wine. That two of the said men to

whom said defendant furnished and delivered the said wine then and there and in the presence of defendant said to said Harvey A. Deline, and said other officers, that they paid to defendant twenty-five cents per drink for said wine. That defendant then and there stated to Harvey A. Deligne, that he resided in room 214 of the Adair Hotel, located at 445 Ellis Street, in the said City and County of San Francisco, and that he had no permit of any kind to move any of said wine from said hotel to said Summerville Apartments. That thereupon said Harvey A. Deligne arrested said defendant and then and there, and at the time of said arrest, took into his possession, of said wine, ten full bottles, one keg full and two partly filled kegs, and of the said bottles some of them contained sherry and some contained port wine, and of the said kegs some contained sherry and some port wine and all of said wine then and there contained one-half of one per cent and more of alcohol by volume, and was then and there in the possession of the defendant and intended by him for use, and was then and there being used in violation of Title II of the Act of October 28th, 1919, and known as the "National Prohibition Act." [36]

That the said defendant, as hereinbefore set out, then and there stated to said Harvey A. Deligne that he, said defendant's, residence was then at 445 Ellis Street, in the said City and County of San Francisco, and upon information thereafter received from the clerk of the hotel located at 445 Ellis Street, that said defendant on the said 20th day of

June, 1920, resided at said hotel, the said Harvey A. Deligne has reason to believe and does believe, and upon such information and belief alleges the fact to be, that said defendant's residence on the said 20th day of June, 1920, was at and in the Hotel Adair, 445 Ellis Street, and that defendant on said 20th day of June, 1920, had no *bona fide* or lawful residence in said Summerville Apartments, nor at 457 Ellis Street in said City and County of San Francisco, California.

That John L. Considine, as District Prohibition Officer, or otherwise, has not, nor has any official of the plaintiff herein ever seized, had in his possession or retained any of the said wine.

WHEREFORE, the said Harvey A. Deligne, John L. Considine, and all the other officers referred to and mentioned in said petition and order to show cause herein, pray, that the said petition be dismissed and that the prayer for the return of the property be denied.

HARVEY A. DELIGNE.

FRANK M. SILVA,

United States Attorney.

BEN F. GEIS,

Asst. United States Attorney,

Attys. for Plaintiff. [37]

United States of America,

Northern District of California,

City and County of San Francisco,—ss.

Harvey A. Delign, being first duly sworn, deposes and says: That he is the Harvey A. Delign named and referred to in the petition and order to show

cause in the above and within entitled action. That he makes the above answer and return to defendant's petition, bill of particulars and the order to show cause herein for himself, John L. Considine, and all persons and officers referred to in said petition, bill of particulars and order to show cause. That he has read the foregoing answer and return and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on *his own knowledge, except as to those matters therein stated on* information and belief, and as to those matters he believes them to be true.

HARVEY A. DELINE.

Subscribed and sworn to before me this 27th day of September, A. D. 1920.

[Seal] LYLE S. MORRIS,
Deputy Clerk U. S. District Court, Northern District of California. [38]

AND BE IT FURTHER REMEMBERED, that on the said 27th day of September, 1920, the said petition came on regularly to be heard before Honorable M. T. Dooling, Judge, of the above-entitled court, and upon said hearing the said defendant, by his counsel, presented and read the said petition and bill of particulars, and said petition and bill of particulars were introduced in evidence in support of said petition and the foregoing return was introduced in evidence by and on behalf of plaintiff, and the said petition and the matters and things set forth therein and in the said return were argued by counsel; in

consideration whereof it was ordered by the Court that said petition for the return of said personal property be denied; to which said ruling of the Court counsel for the defendant then and there duly excepted and said exception was by the Court duly allowed.

BE IT FURTHER REMEMBERED, that on the 27th day of September, 1920, the above-entitled cause came on regularly to trial before the said Court, Honorable M. T. Dooling, Judge thereof, and a jury having been duly empaneled and sworn, to try the said cause, the following proceedings were had and taken:

**Testimony of Harvey A. Deligne, for the
Government.**

HARVEY A. DELIGNE, called as a witness on behalf of the United States, and having been first duly sworn, testified as follows:

I am a police officer of the city and county of San Francisco and have been such around seven years. I know the defendant, Mr. Herine, who sits back of Mr. Tramutolo. I saw him on the 20th of June, of this year, at 457 Ellis Street, a place known as the Summerville Apartments. I have some notes here that I made at the time. In response to a telephone call to the central police station, Officers Brouders, Ohnimus, McKeon and myself went to the Summerville Apartments. We went to rooms 3, 4 and 5 of the apartments, on the first floor. When I reached the apartment the door was open and I could see from the outside numerous

(Testimony of Harvey A. Deligne.)

bottles setting [39] around on the sink and table, glasses, etc. There was loud laughter and talking. There were three men and two women in room 5 and there were two men and one woman in room 3. There were several kegs, one full, and two partly full, and two or three were empty. There were ten bottles full altogether, full of port and sherry wine. I asked who was the owner of these apartments, and Mr. Herine stepped forward and said that he was. He stated that he had been manager of the Cadillac Barr at Eddy and Leavenworth Streets for seven years, that was a saloon and he stated, "I am still in the business, and not in it for my health; you men can see what I am doing; no use trying to fool you people." He was dispensing this wine to the persons present; he served wine on a tray in glasses to the party in room 3, two men and a woman. That was in my presence. Two of the persons present made the statement that they had paid 25 cents a drink; we called Mr. Herine out to hear this statement; it was made in his presence; he admitted it. I tasted some of the wine that had been served and I know wine when I taste it. The wine that I tasted was sherry. I believe it contained more than one-half of one per cent of alcohol. The people that were there were certainly intoxicated. I know that it contained more than one-half of one per cent of alcohol and that it was fit for use for beverage purposes. The wine we took in the patrol-wagon to the City Prison, where it was placed with the property clerk to be held as evidence. The identification tag was

(Testimony of Harvey A. Deligne.)

placed on them at police headquarters. They are in the same condition now, as far as I know, as when they were delivered there.

Thereupon the said kegs and bottles were offered for identification and marked "U. S. Exhibit 1 for Identification."

On cross-examination the said witness testified as following:

I went to this apartment about 1:30 A. M. on June 20th. The telephone call received by the central station was delivered to me [40] by Sergeant Duffy. The doors to the apartment were open, I mean by that that it was open, standing open so that I could look in there from the hall. The people who were in there drinking were not in room 4; they were in room 5, Mr. Herine was in room 5. I did not see Mr. Herine take any money from any of these people in room 5. One round of liquors was dispensed after I was there, in my presence. The round of drinks was dispensed in room 3; Mr. Herine got the liquor from room 4 and brought it into room 3; that was after I had gotten there with the other officers. I did not mark these various kegs. There was a bed in room 3 and a coat and vest that Mr. Herine did not have on was hanging there at the time.

On redirect examination the said witness testified:

The defendant stated to me that he lived at the Adair Hotel, 445 Ellis Street, room 214.

**Testimony of George J. Ohnimus, for the
Government.**

GEORGE J. OHNIMUS, witness called on behalf of the United States, after being first duly sworn, testified as follows:

I am and have been a number of years a police officer of the city and county of San Francisco. On the 20th day of June of this year I was in company with Mr. Deline on a trip to the Summerville Apartments at about 1:30 in the morning. We went to rooms 3, 4 and 5; two of the doors of these rooms, to my knowledge, were open; we could see right in from the hall. We saw there was a sink in there containing a tray with glasses on, some full, some partly full. The drain-board contained several bottles, some full, some partly full and a few kegs. There were five men and three women present in rooms 3, 4 and 5. In one room there was a bed and a bureau and chair, and there was a woman sitting on a man's lap there, and they had two or three glasses on a tray on the bureau. There was a tray brought into this room where the two men and one woman was. I asked the defendant what he was doing [41] there and he stated, "There is no necessity of lying; I will come clean; I am selling this stuff." I asked him if he had lived at that place; he said no, that he lived in another apartment there, in a house adjoining there; I believe it was the Adair Hotel. There were two men in company with one woman, a man by the name of Griffin, and a man by the name of Richards, and they said

(Testimony of George J. Ohnimus.)

that they had bought liquor in there at 25 cents a drink from the defendant. These kegs that are here and the bottles of wine were carried to the patrol-wagon and taken down to the property clerk. I did not go down with them. Police Officer Deline went down with them. I did not see them down in the property clerk's office afterwards.

On cross-examination the said witness testified as follows:

I met officer Deline; on Ellis and Taylor Streets, I believe. When we appeared at the Summerville Apartments two of the doors were open; I believe 3 and 4 were the rooms that were open. I did not see any money pass while I was there. The liquor was brought from room 4 into room 3, I believe. It must have been about half-past twelve, or a quarter to one when we entered the place.

On redirect examination the said witness testified over the objection of counsel for the defendant:

All of the occupants, when I went in, seemed to be intoxicated.

On recross-examination the said witness testified:

I did not say that the defendant was intoxicated; he had been drinking. I would not say all of the rest were intoxicated, some of them seemed to be worse than others. The woman seemed to be in the worst condition.

Testimony of Joseph Brouders, for the Government.

JOSEPH BROUDERS, called as a witness on behalf of the United States, being first duly sworn, testified:

I am a police officer of the city and county of San Francisco and have been such for four years past. On the 20th of June of this year I accompanied Officers Deline and Ohnimus down to Ellis [42] Street, to a place known as the Summerville Apartments. I went into the hotel and down to the end of the hall into rooms 3, 4 and 5. In room 3 there were two men and one woman, and in a room off of the kitchen, I believe, there were two women and three men, making five men and three women in all. (To the Court.) There were five men exclusive of the defendant. In room three there were some glasses sitting on the table, and in the room off the kitchen there were glasses, and in the kitchen there were numerous bottles of wine, port and sherry, and glasses, and two small kegs, I believe, were in the closet. They were of the same class as those kegs standing on the floor here. There were some bottles of wine there too. I believe there were three drinks on a tray that were taken into room 3—I believe that he took them into room 3. It went into that room; who he gave it to, I don't know. I was not in the room. The defendant said, "You police people have got me; there is no use," some words to that effect. He said, "I have been in the saloon business over in the Cadillac Bar there for five or six years, and still in the business." One of the

(Testimony of Joseph Brouders.)

parties in room 3 said he paid 25 cents for the wine; that was not in the presence of the defendant. All of the men and women had been drinking; some showed it possibly a little more than the others. The defendant said he lived in the Adair Hotel; that is a few doors down from the Summerville. I put the bottles in the suitcase, or in the two suitcases, and we took them out and put them in the patrol wagon.

On cross-examination the said witness testified as follows:

I did not accompany these articles to the City Prison, I believe Mr. Deline went. He was ordered by Corporal McIntyre to go down. The first I saw of the defendant he was in the kitchen. Rooms 4 and 5 are in a sort of a little hallway, a hallway about 10 or 12 feet long; the hallway leads south. Room 3 is at the [43] south end; the other apartments are to the left; the kitchen is straight back at the end of the hall going in; the hallway I would judge to be about 10 or 12 feet. The door leading to rooms 4 and 5 was open. There is only one room to the right. The first room is 3, the next one is 4, and then 5. You would walk into the kitchen just the same as I would walk in here, and the kitchen is straight ahead; the room is just to the right of that. This door that was out by the hall that leads into rooms 4 and 5 was open so that I could look in. The door to room 3 was not open. I think Officer Deline was the man that had the door opened, and we walked in. I think he knocked on the door, first. I saw the de-

(Testimony of Joseph Brouders.)

defendant take a tray of drinks, a tray with three glasses on it, to room 3. We announced ourselves as officers. He still went on and served the drinks. The defendant had been drinking, but he was able to attend to his business. I think Officer Deline had a drink.

Testimony of Peter McIntyre, for the Government

PETER MCINTYRE, called as a witness for the United States and having been first duly sworn, testified:

I am a corporal of the police department and have been with the police department of San Francisco for over 17 years. I arrived at the Summerville Apartments on the morning of June 20, 1920, some time after the other officers had arrived. I went to rooms 3, 4 and 5 of that apartment. There were kegs that they had gathered into one room when I got there, and bottles. I think there were five men and two ladies present. There were bottles apparently of liquor in sight. I did not sample any of it. This liquor was sent to the City Prison, under my direction, to be checked up. I never saw it afterwards. The Summerville Apartments is 457 Ellis Street, between Jones and Taylor Streets on the south side. [44]

On cross-examination the said witness testified:

I did not accompany these things to the City Prison; I know Mr. Deline left the scene in the patrol-wagon; I saw him get into the patrol-wagon and go down with the property which is here before me.

Testimony of Tim Griffin, for the Government.

TIM GRIFFIN, called as a witness for the United States and having been first duly sworn, testified:

I am acquainted with the defendant Mr. Herine. I was at the Summerville Apartments on the evening of June 19th and the morning of June 20th when the officers came there. I first went to the apartments about eight o'clock in the evening of June 19th. I got some wine there from Binger Herine, the gentlemen sitting there. I really don't know, I can't remember what I paid for my drinks of wine. My best recollection is 25¢ per drink. The liquor was served to me by the defendant Herine; that liquor was sherry wine; that is what I asked for. A fellow by the name of Richards was with me. I guess he also drank some wine while I was present; I don't know whether he bought any or not. I did not see any women there that evening except the lady Richards had with him. He and I were together in one room with her. I did not drink any wine after the officers came. I could not tell you the number of the room I was in; it was right straight from the hall as you go in.

On cross-examination this witness testified:

I would not be certain that I paid this defendant for the sherry that I bought there; sometimes you neglect paying for it. I paid for some of it; I think I paid this defendant. (To the Court.) I paid the defendant, yes. I don't know how many drinks I had there that night. I paid for more than one; I guess it was around one o'clock in the morning that

(Testimony of Tim Griffin.)

the officers came. I didn't have any drinks after the officers arrived. I guess I was intoxicated. I don't know if the other members of the party were any worse than [45] I was. (In response to a question by the Court.) I have known Mr. Herine two or three weeks. I didn't know him when he was tending bar at the Cadillac. I was first invited up to this room by a fellow and Mr. Herine invited me to come back. When I first went up there in the evening I was sober and all of the whiskey or all of the liquor I drank was drank up there.

Testimony of W. A. Howard, for the Government.

W. A. HOWARD, called as a witness for the United States and having been first duly sworn, testified:

I am manager of the Adair Apartments. I know Mr. Herine, the defendant. He was there when I went in on February 15, 1919; he occupied room 214. The number of the Adair is 445 Ellis Street. He has remained there as a guest at my hotel since that time and is yet.

On cross-examination this witness testified:

Yes, the defendant had a man named Pancost with him; he always had other gentlemen with him from time to time. No, he did not actually leave my place during the month of June; he took another apartment; he took another apartment at the Summer-ville, but he did not give up his tenancy with me. He never left my place and was responsible for the

(Testimony of W. A. Howard.)

rent. Mr. Pancost was a guest of Mr. Herine's. The defendant could not have left my place without my knowledge.

Testimony of Charles J. Ward, for the Government.

CHARLES J. WARD, called as a witness for the United States and having been first duly sworn, testified:

I am a corporal of police. I work in the property clerk's office. On the morning of June 20th I received certain kegs and bottles which were brought in. It was placed in the property clerk's office, checked up, and then placed in the vault. It remained there, so far as I know, until this morning. So far as I know it is in the same condition as it was when it was brought in there. [46]

**Testimony of Harvey A. Deline, for the Government
(Recalled).**

HARVEY A. DELINE, recalled for the United States as a witness, testified:

On thinking over the question I recall that I went up with the liquor down to the City Prison, when I stated before that I did not think I had I was not quite sure. I know that I was to the City Prison when we took a check of it, but I remember now going down on the patrol-wagon and assisting in checking it up.

Here the following occurred:

“The COURT.—Might I inquire if this is the

(Testimony of Binger S. Herine.)

same liquor you are asking to be returned, in this court?

Mr. TRAMUTOLO.—Yes.

The COURT.—Do you question its alcoholic content?

Mr. TRAMUTOLO.—No, we are not questioning it.

Mr. GEIS.—Probably we might shorten this if counsel will admit it contains one-half of one per cent of alcohol or more.

Mr. TRAMUTOLO.—Yes, I will.

Mr. GEIS.—That is all; we offer it in evidence, and with that we rest.

Testimony of Binger S. Herine, on His Own Behalf.

BINGER S. HERINE, the defendant, called as a witness on his own behalf, being duly sworn, testified:

I am the defendant in this case. I was living at the Adair Apartments with Mr. Pancost, and contemplated getting married, and was looking for other quarters, and I moved into the Summerville Apartments, and was giving a party at the Summerville Apartments, when this trouble came up and I was arrested.

At this point counsel for the defendant moved the Court to direct the jury to acquit the defendant, which said motion the Court then and there denied to which ruling of the Court counsel for the defendant duly reserved an exception herein. [47]

The witness continued: I heard the testimony of

(Testimony of Binger S. Herine.)

Mr. Griffin. I did not sell any liquor that night to Griffin or to anyone else. I gave the stuff away, the port and sherry; I was having a party. I got all of this stuff from the Cadillac Bar when I closed the bar up; when this law went into effect, I removed that from the saloon to my apartments, and filed papers with the Government—I filed papers to that effect with the Government, that I removed the stock that I had in that saloon to my apartments. I moved the stuff to room 214 in the Adair Hotel.

The COURT.—Q. How did you get it over to the other place. A. I took it over there.

Q. Did you have a permit to do so?

A. No, I did not have a permit. But this was some of the stock I had when I closed up; the people there that night were friends of mine; Mr. and Mrs. Black, and another lady, Mrs. Herine, and Mr. Richards, and his friends here, who was on the stand a minute ago, who I met only a short time before that, through Mr. Richards. I did not take any money that night, from him or anyone else. I did not remain at the Summerville Apartments after my arrest because I got married at that time and my wife did not want to go through the humiliation of living at that place, and we went back to the Adair Hotel. Mr. Pancost was called out of town on another job and I took the apartment back. Mr. Pancost lived at the Adair Hotel about four months. After this affair I moved back to the Adair. I was in the Summerville at the

(Testimony of Binger S. Herine.)

time I was arrested; my clothing was in there, and I was living there absolutely bona fide at that time. I did not make the statement testified to by the officers, or any statement that I was still in the game selling; I would have to be intoxicated to say anything of that sort if I was doing wrong. I am 28 years old. I have never been arrested in my life. I have been married two and one-half months, upon the 23d [48] of last month it was two months. I have known Mr. Black and his wife, I guess, for six years. Mrs. Herine was one of the parties in there. There was Griffin and Richards and some lady that I met; I never met the lady before; I was introduced to her. Rooms 3, 4 and 5 were rented by me as my apartment and paid for by me. I did not make any such statement, that I would come through clean, and that I was still selling this stuff. I moved to the Summerville Apartments in June, the first part of June.

On cross-examination the witness testified:

I rented this apartment at the Summerville the first part of June and was living there and had something to eat, and clothes. I did not cook very much; I was living mostly at the restaurants at that time. I had not been married yet. I intended to be married that week. My clothing was over there, consisting of a complete outfit that belonged to me. It was in apartment number 3 in the closet; it was there after I was released from jail.

Testimony of George J. Ohnimus, for the Government (Recalled in Rebuttal).

GEORGE J. OHNIMUS, being called for the United States in rebuttal, testified:

I made a search of the closets; I believe in room 5 there were one or two shirts, working shirts, blue shirts. There was nothing in room 3 with the exception of a tray and two glasses on the bureau, nothing in the drawers. I did not see any edibles of any kind, nothing outside of liquor.

Testimony of Harvey A. Deline, for the Government (Recalled in Rebuttal).

HARVEY A. DELINE, recalled for the United States in rebuttal, testified:

On the morning of June 20th I *search* carefully rooms 3, and 4 5 of the Summerville Apartments; there were no shoes, clothing, such as a suit of clothing, or anything that would indicate that a man lived there. There was a coat and vest hanging up in the closet in room 3; the defendant was in his shirt sleeves. All I [49] saw in there was one coat. I did not observe any edibles; I searched every place carefully.

Thereupon counsel for both sides rested and the said cause was argued by counsel. Thereupon the Court delivered its charge to the jury. Thereafter the jury retired to deliberate and returned thereafter into court with the following verdict:

“We the Jury, find BINGER STEWART HERINE, the defendant at the bar, guilty on Count

No. 1. Not guilty on Counts Nos. 2 and 3.”

ARTHUR W. DOLLARD,

Foreman.

Thereafter and on the second day of October, the day fixed by the Court for the pronouncement of judgment, the defendant was called to the bar of the Court and asked to show cause, if any he had, why the judgment of the law and the sentence of the Court should not be pronounced upon him.

Thereupon, Chauncey F. Tramutolo, Esq., counsel for the said defendant, presented to the Court a motion for a new trial and a motion in arrest of judgment, each of which said motions is on file and to which reference is hereby made. Each of the said motions was overruled by the Court, to which ruling counsel for the defendant then and there duly excepted, and the Court pronounced judgment as appears from the judgment-roll in said cause on file herein.

AND NOW, and within due legal time thereafter, the said defendant presents this his bill of exceptions and prays that the same be settled, approved and allowed and that the same may be used upon the writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, heretofore allowed in this cause.

CHAUNCEY F. TRAMUTOLO,

Attorney for said Defendant. [50]

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the re-

spective parties hereto that the foregoing proposed bill of exceptions may be approved, settled and allowed by the Judge of the above-entitled court as correct in all respects, and that the same shall be a part of the record herein and that the same may be made the bill of exceptions herein.

CHAUNCEY F. TRAMUTOLO,
Attorney for Defendant.

FRANK M. SILVA,
United States Attorney.

By ALBERT M. HARDIE,
Assistant U. S. Attorney.

Order Approving and Settling Bill of Exceptions.

To the end that the matters therein contained may be and remain of record, the foregoing bill of exceptions is hereby settled, approved and allowed, as being in all respects, full, true and correct herein.

Dated: This 22d day of December, 1920.

M. T. DOOLING,
District Judge.

Service by copy is hereby admitted this 15th day of December, 1920.

FRANK M. SILVA,
U. S. Attorney.

[Endorsed]: Copy of within proposed bill of exceptions hereby received Oct. 21, 1920.

FRANK M. SILVA,
U. S. Attorney.
ALBERT M. HARDIE,
Asst. U. S. Attorney.

Filed Dec. 22, 1920. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [51]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 8517.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Defendant.

Motion for New Trial.

Now comes Binger Stewart Herine, also known as Binger Stewart Horine, and moves this Honorable Court that the verdict of the jury heretofore given, made and entered in the above-entitled cause, be vacated and set aside and a new trial be granted, and as and for his grounds of motion for a new trial specifies:

I.

That the said verdict is against the law.

II.

That the said verdict is against the evidence.

III.

That the evidence introduced upon the trial of the above-entitled cause was and is insufficient in law to support or justify the said verdict.

IV.

That this Honorable Court committed error to the manifest prejudice of defendant in denying a certain motion or petition made by and on behalf of this defendant, in which petition said defendant [52] prayed for an order of said Court directing and commanding the return to defendant of certain liquor previously taken unlawfully and without warrant from the possession and domicile of defendant, which said liquor is more particularly described as follows, to wit:

Ten (10) full quart bottles of sherry and port wine,
One (1) five gallon keg of sherry.

Two (2) Partly filled kegs of sherry.

One (1) suitcase containing empty glasses and bottles.

V.

That said Court committed error to the manifest prejudice of defendant in admitting in evidence over the objection of defendant, the property described in the foregoing paragraph of this motion.

WHEREFORE, defendant prays that said verdict be set aside and that a new trial of this cause be granted by this Honorable Court.

Dated: October 2d, 1920.

C. F. TRAMUTOLO,
Attorney for Defendant.

It is hereby ordered that the foregoing written motion may be filed herein as of the date of October 2d, 1920.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 14, 1920. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [53]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8517.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Defendant.

Motion in Arrest of Judgment.

Now comes Binger Stewart Herine, also known as Binger Stewart Horine, the defendant in the above-entitled cause, and moves this Honorable Court to arrest the judgment herein, upon the following grounds, to wit:

1. That this Honorable Court had not and has not any jurisdiction to try the above-entitled cause, or to hear or determine the same or to pronounce judgment against this defendant.

2. That the information against this defendant on file herein does not charge this defendant with any crime or offense against the United States of America or with having violated any law or statute thereof, and that the count of said information upon which defendant was convicted, does not contain a

statement of any facts sufficient to charge this defendant with violating any provision of the so-called National Prohibition Act, or with any other offense against the United States of America or with maintaining a common nuisance within the meaning of said act, and particularly for the reason that said count of said information does not charge [54] or allege that said defendant kept the liquor referred to therein, on the premises therein mentioned, for beverage purposes, or for the purpose of sale or for any other unlawful purpose or for any purpose prohibited by the said National Prohibition Act.

Dated: This 2d day of October, 1920.

C. F. TRAMUTOLO,
Attorney for Defendant.

It is hereby ordered that the foregoing written motion may be filed herein as of the date of October 2d, 1920.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Oct. 14, 1920. W. B. Maling,
Clerk. By T. L. Baldwin, Deputy Clerk. [55]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 2d day of October, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 8517.

UNITED STATES OF AMERICA

vs.

BINGER STEWART HERINE.

Minutes of Court—October 2, 1920—Judgment, etc.

This case came on regularly this day for pronouncing of judgment upon said defendant, who was present with attorney C. F. Tramutolo, Esq. B. F. Geis, Esq., Asst. U. S. Atty., was present on behalf of the United States. Said defendant was called for judgment. Mr. Tramutolo moved the Court for new trial, which motion the Court ordered denied, and to which order an exception was entered. Mr. Tramutolo then moved the Court in arrest of judgment, which motion the Court ordered denied, and to which order exception was entered. After hearing Mr. Tramutolo, and no cause appearing why judgment should not be pronounced herein, the Court ordered that said defendant, for the offense of which he stands convicted, be imprisoned for the period of three (3) months in the County Jail, City and County of San Francisco, State of California, and that said defendant stand committed to the custody of the U. S. Marshal to execute said judgment, and that commitment issue accordingly. On motion of Mr. Tramutolo, the Court ordered that execution of said judgment be stayed for the period of one (1) week. [56]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8517.

UNITED STATES OF AMERICA

vs.

BINGER STEWART HERINE.

Judgment on Verdict of Guilty as to Count No. 1.

Convicted Viol. National Prohibition Act.

Ben F. Geis, Assistant United States Attorney, and the defendant with his counsel came into court. The defendant was duly informed by the Court of the nature of the Information filed on 22d day of June, 1920, charging him with the crime of Viol. National Prohibition Act, of his arraignment and plea of Not Guilty; of his trial and the verdict of the jury on the 27th day of September, 1920, to wit: "We, the Jury, find Binger Stewart Herine, the defendant at the bar, Guilty on Count No. 1; Not Guilty on Counts No. 2 and 3. Arthur W. Dollard, Foreman."

The defendant was then asked if he had any legal cause to show why judgment should not be entered herein, and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment, thereupon the Court rendered its judgment;

THAT, WHEREAS, the said Binger Stewart Herine having been duly convicted in this court of

the crime of violating the National Prohibition Act;

IT IS THEREFORE ORDERED AND ADJUDGED that the said Binger Stewart Herine be imprisoned for the period of three (3) months in the County Jail, County of San Francisco, State of California, as to the charges contained in Count No. 1 of the Information.

Judgment entered this 2d day of October, A. D. 1920.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

Entered in vol. 10 Judg. and Decrees at page 139.
[57]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8517.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Defendant.

Petition for Writ of Error.

Now comes Binger Stewart Herine, also known as Binger Stewart Horine, and says that in the

record and proceedings in the above-entitled cause and also in the rendition of the verdict, judgment and sentence against him in said cause, manifest error hath happened to his grievous damage, all of which more fully appears from his assignment of errors filed with this petition, and that petitioner is aggrieved by the said verdict, judgment and sentence.

WHEREFORE, petitioner prays that a writ of error issue in his behalf in said cause out of the United States Circuit Court of Appeals for the 9th Circuit, and that a transcript of the record and proceedings in this cause duly authenticated may be sent to the said Circuit Court of Appeals.

And petitioner further prays that during the pendency of said writ of error, all proceedings on said verdict, judgment and sentence be stayed and that your petitioner be admitted to bail.

Dated: This 2d day of October, 1920.

C. F. TRAMUTOLO,

Attorney for said Defendant and Petitioner.

[Endorsed]: Filed Oct. 14, 1920. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [58]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8517.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Defendant.

Assignment of Errors.

Now comes the above-named defendant and with his petition for a writ of error herein files this his assignment of errors, and in that behalf alleges and shows:

1. That the said District Court had no jurisdiction over the above-entitled cause either to hear or determine the same or to render judgment or sentence therein against said defendant.

2. That the said District Court erred in denying the motion of this defendant for a new trial.

3. That the said District Court erred in denying the motion of this defendant in arrest of judgment.

4. That this Honorable Court committed error to the manifest prejudice of defendant in denying a certain motion or petition made by and on behalf of this defendant, in which petition said defendant prayed for an order of said Court directing and commanding the return to defendant of certain

liquor previously taken unlawfully and without warrant from the possession and domicile of defendant, which said liquor is more particularly described, as follows, to wit: [59]

Ten (10) full quart bottles of sherry and port wine.

One (1) five gallon keg of sherry.

Two (2) partly filled kegs of sherry.

One (1) suitcase containing empty glasses and bottles.

5. That said Court committed error to the manifest prejudice of defendant in admitting in evidence over the objection of defendant, the property described in the foregoing paragraph.

WHEREFORE, defendant prays that his petition for a writ of error be allowed and that the judgment heretofore given and made against him in and by the above-entitled court in this cause be reversed and that speedy justice be done to said defendant in that behalf.

C. F. TRAMUTOLO,
Attorney for Defendant.

[Endorsed]: Filed Oct. 14, 1920. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [60]

Certificate of Clerk U. S. District Court to Transcript on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing

60 pages, numbered from 1 to 60, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of The United States of America vs. Binger Stewart Herine, etc., No. 8517, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error (copy of which is embodied herein), and the instructions of the attorney for defendant and plaintiff in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of twenty-two dollars and forty-five cents (\$22.45), and that the same has been paid to me by the attorney for the plaintiff in error herein.

Annexed hereto are the original writ of error (page 62), return to writ of error (page 65) and original citation on writ of error (page 66).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 23d day of March, A. D. 1921.

[Seal]

WALTER B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk. [61]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Writ of Error (and Order Allowing Same).

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America to
the Judges of the Southern Division of the
United States District Court for the Northern
District of California, GREETING:

Because, in the record and proceedings as also in
the rendition of the judgment and sentence of a
plea which is in said District Court, before you or
some of you, between the United States of America,
plaintiff, and Binger Stewart Herine, *alias* Binger
Stewart Horine, defendant, manifest error hath hap-
pened to the great damage of said Binger Stewart
Herine, as is said and appears by his petition:

We, being willing that such error, if any hath
been, should be duly corrected and full and speedy
justice done to the parties aforesaid in this behalf,
do command you, if judgment be therein given, that
then, under your seal, distinctly and openly, you
send the record and proceedings aforesaid, with all
things concerning [62] the same, to the Judges

of the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court in the Post Office Building, in the City and County of San Francisco, State of California, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 13th day of November next, that the record and proceedings aforesaid being inspected, the said Judges of said Circuit Court of Appeals may cause to be done therein to correct that error what of right and according to the laws and customs of the United States ought to be done.

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, this 13th day of October, in the year of our Lord one thousand nine hundred and twenty and of the Independence of the United States one hundred and forty-fifth.

[Seal]

W. B. MALING,
Clerk.

By C. M. Taylor,
Deputy Clerk.

ORDER.

And now on this 13th day of October, 1920, it is ordered that the foregoing writ be and the same is hereby allowed.

M. T. DOOLING,
District Judge. [63]

[Endorsed]: No. 8517. In the United States Circuit Court of Appeals for the Ninth Circuit. Binger Stewart Herine, also Known as Binger Stewart Horine, Plaintiff in Error, vs. United States

of America, Defendant in Error. Writ of Error. Filed Oct. 14, 1920. W. B. Maling, Clerk. By I. L. Baldwin, Deputy Clerk. [64]

Return to Writ of Error.

The Answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within writ of error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 14th day of October, A. D. 1920, duly lodged in the case in this court for the within named defendant in error.

By the Court.

[Seal]

WALTER B. MALING,
Clerk U. S. District Court, Northern District of California.

By C. M. Taylor,
Deputy Clerk. [65]

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 8517.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation on Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States to The United
States, GREETING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit of Appeals to be holden at the City and County of San Francisco in the State of California within thirty (30) days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the Southern Division of the United States District Court for the Northern District of California, wherein Binger Stewart Herine, also known as Binger Stewart Horine, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 28th day of October, 1920.

M. T. DOOLING,
District Judge. [66]

Rec'd a copy of the within citation on writ of error this 28th day of October, 1920.

FRANK M. SILVA,
U. S. Attorney.
ALBERT M. HARDIE,
Asst. U. S. Attorney.

[Endorsed]: No. 8517. In the United States Circuit Court of Appeals for the Ninth Circuit. Binger Stewart Herine, also known as Binger Stewart Horine, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Oct. 28, 1920. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [67]

[Endorsed]: No. 3665. United States Circuit Court of Appeals for the Ninth Circuit. Binger Stewart Herine, also Known as Binger Stewart Horine, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filed March 23, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. —.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

**Order Extending Time to and Including December
15, 1920, to File Record and Docket Cause.**

Good cause appearing therefor, IT IS HEREBY
ORDERED that the plaintiff in error in this cause
may have and he is hereby granted to and including
the 15th day of December, 1920, in which to file the
record thereof and docket the case with the clerk of
this Court, and the time for such filing and docketing
is hereby enlarged accordingly.

Dated: This first day of November, 1920.

WM. W. MORROW,
Circuit Judge.

Rec'd a copy of the within order this 1st day of
November, 1920.

FRANK M. SILVA,
U. S. Attorney
ALBERT M. HARDIE,
Asst. U. S. Attorney.

[Endorsed]: No. 3665. In the United States Cir-
cuit Court of Appeals for the Ninth Circuit. Binger

Stewart Herine, also Known as Binger Stewart Horine, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Under Rule Sixteen Enlarging Time Within Which to File Record and Docket Cause. Filed Nov. 5, 1920. F. D. Monckton, Clerk. Refiled Mar. 23, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. —.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

**Order Extending Time to and Including February
1, 1921, to File Record and Docket Cause.**

Good cause appearing therefor, IT IS HEREBY ORDERED that the plaintiff in error in this cause may have and he is hereby granted to and including the first day of February, 1921, within which to file the record thereof and docket the case with the clerk of this court, and the time for such filing and docketing is hereby enlarged accordingly.

Dated: This 14th day of December, 1920.

W. H. HUNT,
Circuit Court Judge.

The above order extending time within which to docket cause is hereby approved.

FRANK M. SILVA,

G.,

U. S. Attorney.

Rec'd a copy of the within order this 14th day of December, 1920.

F. M. SILVA,

U. S. Atty.

By J. T. C.

[Endorsed]: No. 3665. In the United States Circuit Court of Appeals for the Ninth Circuit. Binger Stewart Herine, also Known as Binger Stewart Horine, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Under Rule Sixteen Enlarging Time Within Which to File, Record and Docket Cause. Filed Dec. 14, 1920. F. D. Monckton, Clerk. Refiled Mar. 23, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. —.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Extending Time to and Including March 1,
1921, to File Record and Docket Cause.**

Good cause appearing therefor, IT IS HEREBY ORDERED that the plaintiff in error in this cause may have and he is hereby granted to and including the first day of March, 1921, within which to file the record thereof and docket the case with the clerk of this Court, and the time for such filing and docketing is hereby enlarged accordingly.

Dated: This 31st day of January, 1921.

WM. W. MORROW,
Circuit Judge.

The above order extending time within which to docket cause is hereby approved.

FRANK M. SILVA,
U. S. Attorney.
By ALBERT M. HARDIE,
Asst. U. S. Attorney.

[Endorsed]: No. 3665. In the United States Circuit Court of Appeals for the Ninth Circuit. Binger Stewart Herine, also Known as Binger Stewart Horine, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Extending Time. Filed Feb. 1, 1921. F. D. Monckton, Clerk. Refiled Mar. 23, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 8517.

BINGER STEWART HERINE, also Known as
BINGER STEWART HORINE,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

**Order Extending Time to and Including April 1,
1921, to File Record and Docket Cause.**

Good cause appearing therefor, IT IS HEREBY ORDERED that the plaintiff in error in this cause may have and he is hereby granted to and including the first day of April, 1921, within which to file the record thereof and docket the case with the clerk of this court, and the time for such filing and docketing is hereby enlarged accordingly.

Dated: This 26th day of February, 1921.

WM. W. MORROW,
Circuit Judge.

The above order extending time within which to docket cause is hereby approved.

FRANK M. SILVA,
U. S. Attorney.
By BEN F. GEIS,
Asst.

[Endorsed]: No. 3665. In the United States Circuit Court of Appeals for the Ninth Circuit. Binger Stewart Herine, also Known as Binger Stewart Horine, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including April 1, 1921, to File Record and Docket Cause. Filed Feb. 26, 1921. F. D. Monckton, Clerk. Refiled Mar. 23, 1921.. F. D. Monckton, Clerk.

